

## REMARKS

Reconsideration and allowance of this application are respectfully requested in light of the above amendments and the following remarks.

Claims 34, 35, 39, 40, and 42 have been amended. The amendments have been drafted to avoid the objections applied to claims 34 and 42. Support for the amendments is provided for example in paragraphs [0012], [0051], and [0059] of the published specification. (References herein to the specification and drawings are for illustrative purposes only and are not intended to limit the scope of the invention to the referenced embodiments.)

Claims 34-42 were rejected, under 35 USC § 103(a), as being unpatentable over Dahlman et al. (US 2002/0010001). To the extent that these rejections may be deemed applicable to the amended claims, the Applicants respectfully traverse based on the points set forth below.

Claim 34 defines an accuracy testing apparatus that receives a channel quality report for data transmitted according to a first transmission scheme and uses a reception error rate of data transmitted according to a second transmission scheme to determine whether the channel quality report was accurately reported from a communication terminal. The claimed subject matter provides an advantage of determining the most suitable transmission scheme for packet data prior to its transmission and subsequently verifying the suitability of the transmission scheme (see specification page 4, line 23, through page 5, line 7).

The Office Action proposes that if Dahlman's base station (BS) transmits data with a first modulation coding scheme (MCS(1)), which is associated with a first channel quality indicator (CQI(1)), and receives a CQI(2) from the recipient of the transmitted data due to a changing channel condition, then the difference between CQI(2) and CQI(1) identifies the accuracy of the

CQI (see Office Action page 4, lines 12-16). Based on these findings, the Office Action proposes that Dahlman discloses determining the accuracy of a channel quality report value (see page 5, lines 2-12).

However, as acknowledged by the Office Action (see Office Action page 4, lines 13-15), the difference between CQI(2) and CQI(1) identifies the change in channel condition between two measurements represented by CQI(1) and CQI(2). The difference between CQI(2) and CQI(1) provides no indication of the accuracy of either CQI measurement. The scenario set forth in the Office Action could only provide an indication of a CQI's accuracy if one of the measured CQIs was known to be accurate and the channel condition was identical for both measurements. Because the channel condition changes between the times the measurements for CQI(1) and CQI(2) are made, as acknowledged in the Office Action, the proposed scenario cannot provide an indication of CQI accuracy; instead, the difference between CQI(2) and CQI(1) merely identifies the change in channel condition but not the accuracy of either CQI measurement.

Moreover, the Office Action proposes that Dahlman's BS transmits data according to an MCS(1) associated with a CQI(1) that currently represents the measured channel condition, and if a different CQI, such as CQI(2), is subsequently received, then the BS transmits data according to an MCS(2) associated with CQI(2) (see Office Action page 4, lines 12-15). Thus, if Dahlman's BS transmits using MCS(1) and MCS(2) in accordance with CQI(1) and CQI(2), respectively, it follows that Dahlman's BS necessarily assumes that each CQI is accurately reported; otherwise, Dahlman's BS would not apply MCSs that are associated with inaccurate CQIs.

Furthermore, the accuracy testing apparatus of claim 34 is the recipient of a report value and determines whether or not the report value is accurately reported from a communication

apparatus. In view of the object of the test performed by the Applicants' claimed invention, it is impossible to make such a determination in the communication apparatus that transmits the report.

Dahlman and the Applicants' claimed subject matter are substantially different in this regard.

Also, Dahlman discloses that a mobile station (MS) determines a power control command based on a result of comparing a signal-to-interference ratio (SIR) and a threshold and the BS transmits data with a selected MCS, based on the power control command reported from the MS. However, Dahlman fails to disclose or suggest determining whether or not this power control command is accurately reported from the MS. Accordingly, it naturally follows that Dahlman fails to disclose or suggest the Applicants' claimed determining section (claim 34), that determines whether or not a report from a communication apparatus is accurate, based on the reception error rate of data. Method claim 42 similarly recites this subject matter.

Accordingly, the Applicants respectfully submit that Dahlman fails to disclose or suggest all limitations of claim 34 and, thus, cannot be deemed to render obvious the instant claimed subject matter. It is well-settled that, in order to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In other words, all words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Independent claim 42 similarly recites the above-mentioned subject matter distinguishing apparatus claim 34 from Dahlman, but with respect to a method. Therefore, allowance of claims 34 and 42 and all claims dependent therefrom is considered to be warranted.

In view of the above, it is submitted that this application is in condition for allowance, and a notice to that effect is respectfully solicited.

If any issues remain which may best be resolved through a telephone communication, the Examiner is requested to telephone the undersigned at the local Washington, D.C. telephone number listed below.

Respectfully submitted,

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